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OFFICE OF THE REGIONAL ADMINISTRATOR

October 5, 2012

By Certified Mail

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Kenneth Kimmel
Commissioner
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Protection
One Winter Street,
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C.T. Corporation System 155 Federal St., Suite 700 Boston, MA 02110

Re: Clean Water Act, § 505 Notice of Intent to Initiate Citizen Suit for Violations at Pilgrim Nuclear Power Station, Plymouth, Massachusetts NPDES Permit No. MA 0000355

Dear Sir/Madam:

This is a Notice of Intent ("NOI") to commence an action pursuant to the § 505 citizen suit provisions of the federal ("CWA" or "the Act"), 33 U.S.C. §§ 1365 (a)(1), (2), 1319(d), and § 1341, and 40 C.F.R. 135, after the expiration of 60 days of the date of this letter (NOI).

Complainants, as identified below, intend to bring an action against Entergy Nuclear Generating Company and Entergy Nuclear Operations, Inc. ("Entergy"), owner and operator of the Pilgrim Nuclear Power Station ("PNPS") alleging that Entergy has violated and continues to violate the CWA, 33 U.S.C. §§ 1311, 1312, 1341 and 1342 by unlawfully discharging pollutants to waters of the United States and by failing to comply with the terms of its National Pollutant Discharge Elimination System ("NPDES") permit.

Complainants will seek civil penalties against Entergy totaling \$831,325,000.00 for the violations as described with specificity in Exhibit 1 hereto, which is incorporated by reference herein. Where indicated on Exhibit 1, the violations were determined based on Entergy's mandatory reporting to the U.S. Environmental Protection Agency ("EPA") in its monthly Discharge Monitoring Reports ("DMR"). Complainants will also seek injunctive relief requiring Entergy to comply with the Act, and fees, costs, and all other appropriate relief pursuant to 33 U.S.C. § 1365.

I. Law and Facts

A. Law

The CWA is a "bold and sweeping legislative initiative" with broad and ambitious goals.² The Act's objective is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. 33 U.S.C. § 1251(a). To achieve this objective, Congress declared a national goal of totally eliminating discharges of pollutants into our waters by 1985, and an interim goal of making water fit for fish, wildlife and recreation wherever possible by July 1, 1983. 33 U.S.C. § 1251(a).

The CWA prohibits the discharge of pollutants to waters of the U.S. unless they are permitted by EPA under a NPDES permit. 33 U.S.C. §§ 1311(a), 1342. Discharges of pollutants that exceed effluent limits contained in a NPDES permit are unlawful. EPA is required to set conditions in NPDES permits that assure compliance with the Act, and may include conditions including data and information and reporting. §§ 1342(a)(1), 1342(b). The CWA says NPDES permits are for five-year terms, but they may be administratively extended pending the permit renewal process. 33 U.S.C. § 1342. Massachusetts is one of a few states without a delegated CWA program, and therefore EPA issues NPDES permits in Massachusetts subject to a state water quality certification

¹ Under Massachusetts law and the terms of the sale of PNPS to Entergy by Boston Edison Co., Entergy is liable for violations of the CWA preceding its ownership and operation of PNPS. See, e.g., Massachusetts Department of Public Utilities Order, DTE 98-119/DTE 98-126 (1997), approving Boston Edison's divestiture of PNPS which states that "Entergy will assume and indemnify Boston Edison against certain liabilities relating to the assets being sold, including unknown environmental liabilities and remediations other than off-site liabilities." Order, Section III.A.1. See, e.g, Milliken & Co. v. Duro Textiles, LLC, 451 Mass. 547, 556 (2008) (successor is liable when it "expressly or impliedly assumes liability of the predecessor.")

² <u>Dubois v. U.S.D.A.</u> 102 F. 2d 1273, 1294 (1st Cir. 1996).

under § 1341(a)(5).³ The NPDES permit may be suspended or revoked by EPA upon the entering of a judgment under the CWA that PNPS has been operated in violation of applicable provisions of the Act.⁴

B. Facts

Entergy owns and operates a 715-megawatt nuclear power station on Cape Cod Bay in Plymouth, which began operating in 1972 under Boston Edison Company. In about 1999, Entergy acquired PNPS from Boston Edison Company. Since 1972, the cooling and service waters systems at PNPS have operated as a once-through cooling system, with Cape Cod Bay being the primary water source. The NPDES permit program governs the PNPS cooling water intake structure ("CWIS") pursuant to CWA §1326(a) and (b). Entergy's NPDES permit authorizes the discharge of pollutants to Cape Cod Bay from ten point source discharge locations at PNPS, sets effluent limits and standards and monitoring and reporting requirements, including a multi-part program for biological monitoring. 33 U.S.C. §§ 1311 and 1312. Entergy's NPDES permit constitutes both a NPDES permit and a discharge permit issued by DEP under the Massachusetts Clean Waters Act, as amended, M.G. L. c. 21, §§ 26-53.

EPA and Massachusetts jointly issued the first NPDES permit for PNPS in 1983. The permit was renewed and reissued in 1988 and in 1991 (the 1991 Permit). On August 30, 1994, EPA modified the 1991 permit through a formal notice and comment process (the 1994 Permit). The 1994 Permit was due to expire in 1996, at the end of the five-year term that started in 1991, but has been administratively extended by EPA for over sixteen years. ⁶

The 1994 Permit is based on PNPS operating at a capacity that generates up to 655 megawatts. In 2003, Entergy increased PNPS' operating capacity to 715 MW, a rate

³EPA and DEP have a joint permit agreement governing the NPDES permit program. See, Agreement between EPA and Massachusetts Department of Water Pollution Control" (March 18, 1973). Massachusetts must certify to EPA that Entergy's pollutant discharges to Cape Cod Bay under the NPDES will comply with effluent limits and standards under § 1311, and with other provisions of the Act. 33 U.S.C. § 1341.

⁴ CWA § 1341(a)(5) states: "Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this Act [33 USCS §§ 1251 et seq.] that such facility or activity has been operated in violation of the applicable provisions of section 301, 302, 303, 306, or 307 of this Act [33 USCS §§ 1311, 1312, 1313, 1316, 1317]." By letter dated July 8, 1994, Massachusetts certified to EPA pursuant to the CWA § 1341 that PNPS operations conducted in a manner consistent with the 1994 Permit Modification will constitute compliance with the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53.

⁵ EPA, 1984 Permit Fact Sheet, pg. 3; See also: Marine Ecology Studies Final Report, July 1969-December 1977, pg. II-1 (Introduction, part (A)) and NRC's Generic EIS for License Renewal of Nuclear Power Plants, Supplement 29 regarding PNPS, July 2007, at Part 2.1.2 (PNPS NUREG 1437, Supplement 29).

⁶ EPA contends that the NPDES permit remains in effect pursuant to administrative extension provisions of 40 C.F.R. § 122.6. See, Letters to Entergy from U.S. EPA, dated March 1, 1996 and October 25, 2004.

higher than authorized in the NPDES permit. The NPDES permit has not been updated to reflect the higher operating rate at PNPS.⁷

II. Complainants

Each complainant is a citizen for purposes of the CWA, 33 U.S.C. § 1365(g), with standing to bring an action to protect his/her interest in restoring and maintaining the chemical, physical, and biological integrity of the waters of Cape Cod Bay. The Complainants' interests have been and are being affected by the CWA violations alleged in this NOI.

Complainant **Norman Pierce** has resided with his family at 166 Morgan Road in Plymouth, MA, about six miles from PNPS, since 1975. His phone number is 617-435-8872. He and his family use Cape Cod Bay for outdoor recreation, including swimming, walking along the beaches and scenic roads, boating, whale watching and other forms of nature observation, and fishing. Mr. Pierce and his family have an interest in consuming local fish and shellfish, and occasionally do so, but have concerns about the safety of the fish and shellfish due to Entergy's pollution of the Bay. Mr. Pierce has been active in outreach, organizing and educational efforts to ensure that PNPS does not harm human health and the environment. The violations of the CWA identified in this NOI harm Mr. Pierce's interests the scenic, aesthetic, and recreational qualities of Cape Cod Bay in the area near PNPS and his home, and his ability to enjoy locally harvested fish and shellfish. The monitoring and reporting violations identified in this NOI interfere with his ability to ensure that PNPS operations do not harm human health and the environment. The injuries to Mr. Pierce's interests will be redressed by a favorable court decision.

Complainant Pine duBois has lived with her family at 93 Elm St in Kingston, MA, approximately 8.5 miles from PNPS, since 1995. Her phone number is 781-585-2322. She and her family use Cape Cod Bay for outdoor recreation, including swimming, walking along the beaches and scenic roads, boating, nature observation, and fishing, and they enjoy eating local fish and shellfish. For over 25 years, Ms. duBois has been active in outreach, organizing and educational efforts with regard to preserving and protecting Cape Cod Bay and the Jones River, which is the largest river emptying into the Bay. She is executive director of the nonprofit Jones River Watershed Association (JRWA), whose mission includes protecting the Bay's marine aquatic life. Ms. duBois has researched and studied the negative environmental impacts of the violations alleged in this NOI. The violations of the CWA identified in this NOI harm Ms. duBois' interests in the scenic, aesthetic, and recreational qualities of Cape Cod Bay in the area near PNPS and her home, and her ability to enjoy locally harvested fish and shellfish. The monitoring and reporting violations identified in this NOI interfere with her ability to ensure that PNPS operations do not harm the Bay's marine aquatic resources. The injuries to Ms. duBois' interests will be redressed by a favorable court decision.

⁷ In May 2003, Entergy increased PNPS' power level from 1,998 thermal megawatts (MWt) to 2,028 MWt, an increase of 1.5%, which brought the station's annual generating capacity up to the current 715 MW from an original capacity of 655 MW.

Complainant **Theodore Bosen** lives at 69 Janebar Circle, Plymouth, MA, approximately nine miles from PNPS. His phone number is 508-888-8888. From 1985 to 1991, he and his family lived in Plymouth near Long Beach. From 1985 to the present, Mr. Bosen and his family have used portions of Cape Cod Bay for outdoor recreation, including swimming, walking along the beaches and scenic roads, boating, nature observation, and fishing. As a summer visitor through the 1970's and 80's, and much more frequently after moving to Plymouth permanently in 1985 through the fall of 1986, Mr. Bosen harvested and consumed shellfish from Warren Cove around the northerly side of the bluff from PNPS. After he learned that pollution from PNPS was being discharged near the area where he harvested shellfish, he stopped harvesting and consuming the shellfish and visiting the beach and coastal areas around PNPS due to his concerns about the impacts of the pollution. The violations of the CWA identified in this NOI harm Mr. Bosen's interests the scenic, aesthetic, and recreational qualities of Cape Cod Bay in the area near PNPS and his home, and his ability to enjoy locally harvested fish and shellfish. Since 1986, Mr. Bosen has been active in outreach, organizing and educational efforts to ensure that PNPS does not harm human health and the environment. The monitoring and reporting violations identified in this NOI interfere with his ability to ensure that PNPS operations do not harm the Bay's marine aquatic resources. The injuries to Mr. Bosen's interests will be redressed by a favorable court decision.

III. Violations

Entergy has violated and continues to violate the CWA 33 USC §§1311(a), 1341, and/or 1342, by discharging and continuing to discharge pollutants into waters of the U.S. without a permit, and/or in violation of effluent standards or limits, and/or has failed and continues to fail to conduct monitoring and reporting as required by the 1994 Permit. EPA and Massachusetts have failed to redress these violations. Complainants will seek a civil penalty of \$25,000.00 per day for each of the violations set forth in Exhibit 1, pursuant to 33 U.S.C. § 1319.

Entergy's violations have resulted in discharges of pollutants that are harmful to the chemical, biological, and physical integrity of the waters of Cape Cod Bay. This includes the discharge of tolytriazole, oil and grease, and chlorine. Tolytriazole is a corrosion inhibitor that can harm marine environments and is regulated by the U.S. EPA. Discharges of oil and grease and chlorine to water bodies can harm human health and the environment. Entergy has also discharged wastewater that has a pH level and

⁸ Tolytriazole is a corrosion inhibitor used to control the corrosion of copper alloys in the PNPS cooling-water systems. It can be considered a ubiquitous contaminant in the aquatic environment. *Marine Pollution and Human Health*, Issues in Environmental Science and Technology, Environ Sci Technol 2011 May 1; 45(9): 3858-61 21524137, Royal Society of Chemistry publishing, ed. By RE Hester, RM Harrison. These authors conclude that due to their physiochemical properties (i.e. low biodegradability and high hyrophobicity), corrosion inhibitors are not removed from sewage treatment plants, and coupled with their toxicity, pose a treat to estuarine and coastal environments.

temperature that are in excess of regulatory limits intended to protect water quality. In addition, Entergy has failed to comply with monitoring and reporting requirements that are in place in order to enable the public and regulators to determine whether Entergy is complying with the law.

A. Ongoing discharges of tolytriazole without a permit and in violation of permit condition

On 220 days since June 9, 2003, Entergy⁹ violated the CWA §§ 1311(a), 1341, and 1342, and the 1994 Permit, Part (A)(1)(f), (p. 2), by discharging effluent containing the pollutant tolytriazole into Cape Cod Bay, as shown on Exhibit 1, Section A.

Entergy does not have a NPDES permit that allows the discharge to Cape Cod Bay of tolytriazole, a pollutant within the meaning of the Act. The 1994 Permit, Part (A)(1)(f), sets a zero discharge limit for tolytriazole. It states, "[t]here shall be no discharge of treated or untreated chemicals which result from cleaning or washing of condensers or equipment wherein heavy metals may be discharged." The discharge of tolytriazole results from cleaning or washing of condensers wherein heavy metals may be discharged.¹⁰

B. Discharge of TSS and oil and grease from unpermitted storm drain

On 21 days since October 1995, Entergy violated the CWA §§1311(a) and 1341 by discharging effluent containing pollutants to Cape Cod Bay through an unpermitted storm drain as shown on Exhibit 1, Section B. In a 1995 letter to EPA dated October 25, 1995, Boston Edison identified this storm drain as unpermitted and admitted that the storm drain discharges pollutants, identified as total suspended solids (TSS) and oil and grease, like the discharges from the other on-site storm drains, to Cape Cod Bay. 11

⁹ Complainants refer to Entergy as the "violator" even for violations occurring prior to 1999, when Entergy acquired PNPS from Boston Edison Company. See Footnote 1 for Entergy's assumption of liability for these violations.

¹⁰ By letter dated June 30, 1995 (the 1995 letter), Exhibit 2 hereto, EPA purported to "modify" the 1994 Permit to allow PNPS to discharge tolytriazole, but this action violated the CWA and was not a minor permit modification under 40 CFR § 122.63. EPA was required to issue a draft permit for public notice and comment but failed to do so. See, 40 CFR § 122.62.Moreover, even if the 1995 letter is a valid permit modification, Entergy has failed to demonstrate compliance with the tolytriazole effluent limits EPA purported to set. EPA purported to set effluent limits for tolytriazole in the 1995 letter. (An "initial" tolytriazole concentration limit of 20 mg/l, a "final" discharge concentration of 2 mg/l, and a "worst case scenario," effluent limit of 2.35 mg/l at a volume of 200 gallons per minute (GPM) of tolytriazole.)

¹¹ The 21 violations are calculated as follows. An October 25, 1995 Boston Edison letter states there is an unpermitted storm drain located "at the boat launch between storm drain Outfalls 006 and 007" that "drains a small portion of the facility which is similar to the drainage areas for Outfalls 004, 005, 006, and 007. Stormwater runoff from the miscellaneous outfall is expected, therefore, to be similar to runoff from the other four outfalls." October 25, 1995 Letter, p. 3, Complainants' Exhibit 3. According to Entergy DMRs and the 1994 permit, Outfalls 004, 005, 006 and 007 discharge effluent containing the pollutants total suspended solids (TSS) and oil and grease. 1994 Permit, p. 12, Part A(7). Therefore, Entergy has admitted that the unpermitted storm drain discharges effluent containing these same pollutants. See also, April 1999

These violations are ongoing and occur whenever there is a storm event that results in discharge of effluent containing pollutants through the unpermitted storm drain to Cape Cod Bay.

C. Ongoing violation of chlorine (TRO) limit for condenser cooling water discharge at Outfall 001

Entergy violated the CWA § 1342 and the 1994 Permit, Part (A)(1)(a)(1), (p. 2), by exceeding the maximum daily effluent limit of 0.1 mg/l for total residual oxidant (TRO) at Outfall 001 on the three days identified in Exhibit 1, Section C. Entergy shows an ongoing pattern of noncompliance with this effluent limit. 12

D. Violation of chlorine (TRO) limit for service water discharge at Outfall 010

Entergy violated the CWA§ 1342 and the 1994 Permit, Part (A)(5)(a) (p. 10), by exceeding the maximum daily effluent limit of 1.0 mg/l for TRO at Outfall 010 on the 47 days identified in Exhibit 1, Section D.¹³

The 1994 Permit TRO effluent limits for Outfall 010 are 0.50 mg/l average monthly and 1.0 mg/l daily maximum. Entergy's DMRs report eight daily violations of the average monthly and daily maximum limits between May 2001 and July 20, 2011. Further, for at least 39 months between December 1996 and April 2000, Entergy's DMRs simply state that "periodically total residual chlorine exceeded permit requirements prior to dilution" at Outfall 010. Each of the 39 months has been counted as only one daily violation, and is combined with the eight individual days of violation for a total of 47 days.

DMR ("EPA was contacted to remind them that a small miscellaneous yard drain noted in the 1995 permit application is not covered in the existing permit..."). Further, Entergy's DMRs show that grab samples were collected twice per year from storm drain Outfalls 004, 005, 006, and 007 "within the first hour of the start of a significant storm event" on 21 occasions between 1997 and November 2010. Therefore, on these same 21 occasions, there were also discharges of effluent containing pollutants from the unpermitted storm drain, according to Entergy's admissions. See, Exhibit 1, Part B, for the months in which Entergy's DMRs show discharges of effluent containing pollutants from storm drains 004 through 007.

¹² The condenser cooling water discharge from Outfall 001 (1994 Permit, p. 6) is the largest of the PNPS point source discharges to Cape Cod Bay. The 1994 Permit allows a discharge limit of 510 million gallons a day (mgd) daily maximum, and 447 mgd average monthly volume limit. There is no real time flow monitor to document the actual amount of condenser cooling water discharged to Cape Cod Bay from Outfall 001; the 1994 Permit allows PNPS to estimate the flow "from pump capacity curves and operational hours." 1994 Permit, Part (A)(2)(a). Entergy has reported the same daily maximum flow of 446.4 mgd in every monthly DMR for over a decade, regardless of the hours of operation in any given month, raising questions about the accuracy of this measurement.

¹³ The 1983 Permit established far more stringent effluent limits of .25 mg/l average monthly and .5 mg/l maximum daily TRO at Outfall 010. Even with the relaxed effluent limits, Entergy still shows a pattern of noncompliance with this permit condition.

E. Ongoing violations of monitoring and reporting requirement for pH level in condenser cooling water discharge at Outfall 001

Entergy violated the CWA § 1342 and the 1994 Permit, Part (A)(2)(a), by failing to monitor and report the pH of the condenser cooling water effluent discharged from Outfall 001, on 6,514 occasions since 1994, as identified in Exhibit 1, Section E. The pH of the condenser cooling water discharged from Outfall 001 "shall not vary by more than .5 standard units from that of the intake water." 1994 Permit, part (A)(2)(a), (p. 6). The pH standard must be met at all times when the cooling water effluent is being discharged from Outfall 001. *Id.* Entergy has failed and continues to fail to monitor and report the discharge from Outfall 001 in a manner that establishes that the pH of the discharge from does not vary more than .5 standard units from that of the intake water.

F. Ongoing violations of monitoring and reporting requirement for pH of thermal backwash discharges from Outfall 002

Entergy has violated the CWA § 1342 and the 1994 Permit, Part (A)(3)(c), (p. 8), by failing to monitor and report the pH of the thermal backwash effluent discharged from Outfall 002 on 41 occasions since 2001, as identified in Exhibit 1, Section F.¹⁴

Under the 1994 Permit, Part (A)(3),(p. 8), the thermal backwash discharge pH "shall not vary by more than .5 standard units from that of the intake water." Entergy's DMRs state that the thermal backwash meets the pH standard, but fail to provide documentation or data to show that this is in fact the case, and thus the monitoring and reporting is inadequate. Entergy has violated and continues to violate Part (A)(3), (p. 8), by failing to monitor and report the pH of the effluent and that of the intake water to determine whether the pH varies by more than .5 standard units during thermal backwash operations.

G. Ongoing Violations of monitoring and reporting requirements for pH of intake screen wash (fish sluice water) discharge at Outfall 003

Entergy has violated the CWA § 1342 and the 1994 Permit, Part (A)(4)(e), (p. 9), by failing to monitor and report the pH of the intake water and effluent discharged from Outfall 003, on the 2,793 occasions identified in Exhibit 1, Section G.¹⁵

¹⁴ Three to five times per year, PNPS is reduced to 50% power and a thermal backwash is conducted to control biological fouling. During the backwash, water is heated to about 105 degrees F and two of the four traveling screens on the intake structure are rotated in reverse, allowing heated, non-chlorinated seawater from the condensers to flow back over the screens and to the intake embayment. The treatment is maintained for about 35 minutes. Nuclear Regulatory Commission, Supplemental Environmental Impact Statement, PNPS, Vol. 29, NUREG-1437, July, 2007, § 2.1.3, p. 2-11.

¹⁵ Prior to water flowing through either the cooling water pumps or the service water pumps, it passes through 10-ft wide screens that are intended to prevent debris and aquatic organisms from being entrained in the cooling or service water systems. The screens are washed when they are in operation by using pressure hoses to remove the trapped organisms from the screens. Impinged fish are washed into a fish-return sluiceway that discharges to Cape Cod Bay." According to the 2007 EIS, impingement sampling

The effluent limit for the Intake Screen Wash (Fish Sluice Water) at Outfall 003 "shall not vary by more than .5 standard units from that of the intake water." 1994 Permit, Part (A)(4)(e). The pH standard must be met at all times when the effluent is being discharged from Outfall 003. Entergy failed and continues to fail to monitor and report the pH of the intake water to establish that the Intake Screen Wash effluent discharged through Outfall 003 does not vary by more than .5 standard units from the intake water.

H. Ongoing violation of monitoring and reporting for pH of storm drain discharges at Outfalls 004, 005, 006 and/or 007

Entergy has violated the CWA § 1342 and the 1994 Permit, Part (A)(7)(f), (p.12), on 21 days since 1994, by failing to properly monitor and report the pH level of discharges from storm drain Outfalls 004, 005, 006, and/or 007, as identified in Exhibit 1, Section H.

Discharges from Outfalls 004, 005, 006, and/or 007 must be monitored twice per year, during April and September and "[t]he pH shall not be less than 6.0 standard units nor greater than 8.5 standard units, or not more than .2 standard units outside the naturally occurring range." 1994 Permit, Part (A)(7)(f). Entergy has failed to monitor and report and continues to fail to monitor the pH of the discharges to show that these pH requirements are being met.

Entergy has also violated and continues to violate the monitoring and reporting requirements of the 1994 Permit, Part (A)(7)(f), by failing to report the ambient pH of the Cape Cod Bay receiving waters to determine if the pH in the effluent discharged to the Bay from Outfalls 004, 005, 006, and/or 007 meets the .2 delta standard.

I. Ongoing violation of monitoring and reporting requirements for temperature of condenser cooling water discharge at Outfall 001

Entergy has violated the CWA § 1342 and the 1994 Permit, Part (A)(1)(g), (p. 3) on 6,545 days since 1994 by failing to properly monitor and report the temperature of condenser cooling water discharge, as identified in Exhibit 1, Section I.

The rate of change in temperature of the condenser cooling water discharge from Outfall 001 may not exceed (1) a 3-degree Fahrenheit rise or fall for any sixty-minute period during normal steady state plant operation, and (2) a 10-degree Fahrenheit change during any sixty-minute period of normal load cycling, subject to certain exemptions. 1994 Permit, Part (A)(1)(g). Entergy has failed and continues to fail to monitor and report the temperature in a manner that shows that the condenser cooling water meets the temperature limit. Entergy's DMRs show only a maximum daily temperature for the condenser cooling water discharge, which fails to meet the monitoring and reporting conditions in the 1994 Permit.

occurs three times each week, and a screen wash "is scheduled for eight hours prior to each of the three sampling events." NUREG 1437, Supp. 29, pg. 2-10 (2007 EIS).

J. Ongoing violation of monitoring and reporting requirements for temperature of intake screen wash (fish sluice water) discharge at Outfall 003

Entergy has violated the CWA § 1342 and the 1994 Permit, Part (A)(4)(b), (p.9), by failing to properly monitor and report the temperature of the discharge on 2,793 occasions since 1994, as shown on Exhibit 1, Section J. The temperature of the discharge from Outfall 003 "shall at no time exceed the temperature of the intake water used for this discharge." Entergy failed to monitor and report the temperature of the intake water to determine whether the discharge from Outfall 003 was the same as that of the intake water.

K. Ongoing violation of monitoring and reporting requirements for chlorine (TRO) in condenser cooling water discharge at Outfall 001

Entergy has violated the CWA, § 1342 and the 1994 Permit, Part (A)(2)(a), (p. 6), by failing to conduct continuous chlorine testing of the condenser cooling water discharged at Outfall 001 (510 mgd maximum volume)¹⁶ on 2,154 occasions from at least August 26, 1998 to the present, as shown on Exhibit 1, Section K.

Entergy's DMRs report 2,154 days of chlorination of the condenser cooling system for 2 hours per day between January 1, 2002 and July 31, 2012. The DMRS fail to identify the specific day of chlorination.¹⁷ Pursuant to the 1994 Permit, Part (A)(2)(a), Entergy was required to have conducted continuous chlorine testing on each of the 2,154 days that the condenser cooling water was chlorinated and discharged to Cape Cod Bay via Outfall 001.

L. Ongoing violation of monitoring and reporting requirements for chlorine (TRO) in service cooling water discharge at Outfall 010

Entergy has violated and continues to violate the CWA § 1342 and the 1994 Permit, Part (A)(5)(a), (p.10), by failing to conduct continuous chlorine testing on the service cooling water discharged from Outfall 010 on 5,086 occasions from 1998 to the

¹⁶ While the EPA purported to modify these sampling procedures via letter dated August 26, 1998, this modification was invalid because it was not a "minor modification" under 40 CFR § 122(a) - (h) and required public notice and comment. See, Exhibit No.4.

¹⁷ From September of 1998 through November of 2001, Entergy's DMRs either state that chlorination of condenser cooling water at outfall 001 occurred "when intake screens were in service" or completely fail to state the total number of days of chlorination. This makes it impossible to determine the actual number of days of violation of this permit condition. When the months for which data is available are averaged by year, PNPS chlorinates its cooling water between 14 to 26 days per month. According to the EIS, hypochlorination events take place during spring, summer and fall when chlorination events occur for up to two hours per day. On information and belief, it is very likely that there were hypochlorination events during the spring, summer, and fall of the following years: 1998, 1999, 2000, and 2001.

present, as identified on Exhibit 1, Section L. 18

The 1994 Permit requires Entergy to conduct continuous chlorine testing on each of the 5,086 days that the plant service cooling water was chlorinated and discharged via Outfall 010. Entergy's failure to conduct continuous chlorine testing on each day that the service cooling water was chlorinated (which is and was continuously chlorinated) is a violation of the 1994 Permit, Part (A)(5)(a).

M. Ongoing violation of permit condition requiring an approved Annual Environmental Monitoring Program carried out under the oversight of the PATC

From January 1, 2002 to the present, Entergy has been operating PNPS without an approved environmental monitoring program, in violation of the CWA § 1342 and the 1994 Permit, Part (A)(8)(b) through (e), (p.13), for a total of 3,865 days of violation as identified in Exhibit 1, Section M.

The 1994 Permit states that Entergy, "shall conduct such studies and monitoring as are determined by the EPA and the State to be necessary to evaluate the effect of the operation of the Pilgrim station on the balanced, indigenous community of shellfish, fish, and wildlife in and on Cape Cod Bay." *Id.* at (A)(8)(b). In 1990, an Environmental Monitoring Program was approved by EPA and the state, and any revisions "which may be warranted by the availability of new information" must be approved by EPA and the state annually. *Id.* at (A)(8)(b)-(e). This monitoring program, once approved "becomes an integral element of this permit." *Id.* at (8)(a)(c).

The 1994 Permit further requires Entergy to "carry out the monitoring program under the guidance of the Pilgrim Technical Advisory Committee." Id. at 8(d). The PATC is an advisory committee established to ensure the Pilgrim marine studies have the benefit of qualified, outside scientific and technical advice, and are responsive to regulatory agencies. 1991 and 1994 Permit, Attachment "A," Part (I)(A) and 1994 Permit, Part (A)(8)(d). The PATC met as a whole body twice annually for a total of 93 meetings, documented between 1972 and 1999. The PATC has not met since January 3, 2000, soon after Entergy took ownership of PNPS.

Since 2002, Entergy has made unilateral changes to the last Environmental Monitoring Program that was approved by EPA and DEP in 2002. Although Entergy has submitted identical annual environmental programs to EPA and DEP every year since 2002, there is no record or evidence of approval by the PATC, EPA, or the state of any

¹⁸ The PNPS service cooling water system is continuously chlorinated for macroinvertebrate control. The monthly DMRs list "continuous" as the required "frequency of analysis" for TRO at Outfall 010. (See, Jan. 2012 DMR for Outfall 010). Entergy's hand-written data on the same DMRs admits that grab samples are performed instead.

¹⁹ The PATC is also referred to as the "Pilgrim Administrative-Technical Committee." See, e.g., Marine Ecology Monitoring plan, Attachment A to NPDES permit, para. IA.

annual program since 2002. This violation of the 1994 Permit, Parts (A)(8)(b)-(e) is ongoing.

N. Ongoing violation of permit condition requiring collection and reporting of benthic monitoring data

From 2000 and continuing to the present, Entergy has violated and continues to violate the CWA § 1342 and the 1994 Permit, parts (A)(1)(h), (p. 3), and (A)(8)(d), (p. 13) and Part I.D. of the Marine Environmental Monitoring Plan by failing to collect and report data on benthic monitoring two times a year, in March and September, for a total of 23 violations (2 per year 2000 through 2011, and March, 2012), and by failing to conduct transect monitoring 4 times per year, in March, June, September and December, for a total of 46 violations (4 per year 2000-2011, and March and June, 2012), as shown in Exhibit 1, Section N (69 total violations).

The 1990 Marine Environmental Monitoring Program, Part I.D, Attachment A to the 1994 Permit and incorporated by reference via Parts (A)(1)(h) and (A)(8)(d) states,

The benthic flora and fauna will be monitored at three sampling stations at depths of approximately 10 feet (MLW) (Figure 1). The dominant flora and fauna in each plot are recorded and quantitative samples are collected from rock surfaces. Sampling will continue two times a year (March and September) to determine power plant-related effects.

In addition, transect monitoring to map the extent of stunted and denuded areas immediately off the discharge canal will be continued 4 times a year (March, June, September and December) in 1990."

O. Ongoing violation of permit conditions for protection of fish from gas bubble disease

Entergy has violated the CWA § 1342 and the 1994 Permit, Parts (A)(2)(e) and (f), (p.7), on 2,989 days since April 2000, by failing to maintain a barrier net near to the terminal end of the discharge canal for the protection of menhaden and other finfish, and/or by failing to monitor and report dissolved nitrogen saturation levels in the discharge canal at the point of discharge, as shown on Exhibit 1, Section O.

The 1994 Permit, Part (A)(2)(e), (p.7), requires that "[t]he permittee shall maintain a barrier net as near to the terminal end of the discharge canal as good engineering practice will allow. Except for changing nets or other barrier maintenance, it shall prevent fish entry into the canal from April 1 to November 30 each year when the plant is operating." Part (A)(2)(f) requires that "[i]f EPA or the State determine that the physical barrier net required by Subparagraph "e" above does not effectively prevent the mortality of menhaden or other finfish, the permittee shall, from the date of said determination, maintain an average dissolved nitrogen saturation level of less than 115%."

Entergy has failed, and continues to fail, to maintain the barrier net during the period from April 1 to November 30 in each year from 2000 to 2011, and from April 1, 2012 to the present, and has failed to monitor and report that the average dissolved nitrogen saturation is less than 115% during that time period, in violation of the 1994 Permit, Parts (A)(2)(e) and (f).

IV. Relief Requested

The Complainants will seek mandatory, prohibitory and prospective injunctive relief ordering compliance, civil penalties, fees and costs, and all other appropriate relief available under the CWA §§ 1319 and 1365(a) and other applicable statutes to redress past, ongoing, and prospective violations of the Act, including but not limited to:

- A. Civil penalties of \$25,000.00 per day for each violation described in Exhibit 1 hereto;
- B. An order requiring Entergy to comply with effluent standards and limits in the 1994 Permit for PNPS, and with its monitoring and reporting requirements;
- C. An injunction requiring Entergy to cease and desist its unpermitted discharges into Cape Cod Bay; and
- D. Other relief that is just and proper.

The Complainants are represented by counsel as identified below. For questions regarding this NOI, please contact Margaret E. Sheehan, Esq., at 508 259 9154.

Very truly yours,

Margaret E. Sheehan, Esq.

Maynet Sneet.

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cc:

Senator John Kerry Senator Scott Brown Representative Edward Markey Representative Bill Keating Governor Deval Patrick Secretary of EOEEA, Richard Sullivan Senator Therese Murray Senator Marc Pacheco Senator Dan Wolf Senator James Eldridge Senator Robert Hedlund Senator Benjamin Downing Senator William Brownsberger Representative Tom Calter Representative Vinny DeMacedo Representative Sarah Peake Representative Lori Ehrlich Representative James Cantwell Representative Anne Gobi Representative Frank Smizik Representative Kate Hogan Representative Randy Hunt Representative Dan Winslow Town of Plymouth, Board of Selectmen Town of Plymouth, Nuclear Matters Committee Town of Duxbury, Nuclear Matters Committee

Complainant's Exhibit List

Clean Water Act, § 505 Notice of Intent to Initiate Citizen Suit
Pilgrim Nuclear Power Station, Plymouth, Massachusetts, NPDES Permit No. MA
0000355

- 1. Table of Violations
- 2. Letter from U.S. EPA to Boston Edison, dated June 30, 1995, re: tolytriazole.
- 3. Letter from Boston Edison to U.S. EPA, dated October 25, 1995, re: NPDES permit renewal and "miscellaneous" storm drain.
- 4. Letter to Boston Edison from U.S. EPA, dated August 26, 1998, re: chlorine sampling procedures.

Complainant's Exhibit 1

Clean Water Act, § 505 Notice of Intent to Initiate Citizen Suit Pilgrim Nuclear Power Station, Plymouth, Massachusetts, NPDES Permit No. MA 0000355

Sec. A: Ongoing discharges of tolytriazole and without a permit and in violation of permit condition (A)(1)(f) and CWA, 33 USC §§ 1311(a), 1341, and 1342

	Concent	ration (mg/l)							
Date	Initial	Final	Total Gallons	Avg. (g/m)	Max. (g/m)	pН	TSS (mg/l)	Outfall	Days
6/9/03-		0.0016	10000		100	9.7	0.4	011	
6/12/03	5	0.0016	10000	2	100	7.7	0.4	011	4
6/23/03	5	0.0032	10700	-	-	7.0	53	011	1
11/13/93 5/25/04-	5	0.0032	10860	-	<u>-</u>	6.8	2.5	011	1
5/27/04	3	0.001	18000	15	50	7.9	0.2	011	3
6/14/05	14	0.001	200	10	15	8.2	0.14	011	1
7/20/05	14	0.001	3500	10	15	7.6	0.14	011	1
1/21/06	13	-	4000	33	33	9.0	-	005	1
1/30/06	3.2	0.002	9520		•	7.8	46.1	011	1
2/10/06	6	<u>-</u>	20	-	-	8.6	-	005	1
6/3/06	7	0.001	13000	10	50	7.7	0.5	011	1
4/7/07	3.2	0.004	9519	-	•	6.9	39	011	1
6/1/07	5	0.001	10000	10	50	8.3	0.001	011_	1
6/29/07	1	0.001	450	10	50	7.6	0.001	011	1
8/30/07	3.2	0.002	9352	55	200	6.1	0.001	011	1
11/16/07	1	0.001	9520	79	200	7.7	15.9	011	1
5/31/08	4	0.001	5300	8	50	7.9	0.5	011_	1
6/1/08	4	0.001	12600	8	50	7.9	0.5	011	1
7/15/08	4	0.001	160	5	50	7.9	0.5	011	1
1/21/09	1	0.001	10354	100	200	7.5	20	011	1
10/6/09	62	0.006	2300	25	30	8.2	0.500	011	1
10/14/09	62	0.006	7500	25	30	8.2	0.500	011	1
5/22/10	25.0*	0.004	2400	10	50	8.2	0.3	011	1
12/3/10	1.0	0.001	8016	50	200	8.1	13.8	011	1
1/19/11- 4/21/11	30*	0.0001	1000	42	42	_	_	001	92
1/20/11	1.0	0.0007	7849	50	200	7.9	1.2	011	1
2/1/11	5.0	0.003	10020	100	200	7.4	22.5	001	1
3/7/11	3.0	0.002	8851	100	200	7.2	21.5	001	1
3/14/11	4.0	0.003	9519	100	200	7.4	1.0	001	1
3/16/11	7.0	0.005	9686	100	200	7.2	15.4	001	1
3/18/11	3.2	0.002	9352	100	200	7.3	3.2	001	1
3/21/11	8.0	0.005	9690	100	200	6.9	2.2	001	1
3/22/11	3.2	0.002	9770	100	200	7.3	13.6	001	1

Exhibit No. 1, Pg. 2

			S	ec. A, c	ont'd				
	Concentration (mg/l)						TSS		
Date	Initial	Final	Gallons	Avg. (g/m)	Max. (g/m)	pН	1 SS (mg/l)	Outfall	Days
3/23/11	3.2	0.002	9686	100	200	7.0	2.0	001	1
3/28/11	3.2	0.002	10000	100	200	7.6	4.8	001	1
3/30/11	3.0	0.002	9686	100	200	7.5	3.4	001	1
4/4/11	3.0	0.002	9686	100	200	6.9	2.8	001	11
4/6/11	5.0	0.003	9686	100	200	7.3	1.4	001	1
4/8/11	7.0	0.005	9686	100	200	7.4	1.8	001	1
5/24/11	4.0	0.003	9853	100	200	8.1	14.2	001	1
5/26/11	6.0	0.004	8350	100	200	7.4	7.5	001	1
6/2/11	9.0	0.006	9653	100	200	7.3	5.4	001	1
8/11/11	8.0	0.001	2650	10	20	7.9	0.5	011	1
8/25/11- 11/1/11	15.0	0.000	2000	1.4	1.4	-	-	001	68
9/17/11	8.0	0.001	5100	10	30	7.9	0.5	011	1
9/28/11	8.0	0.001	3400	10	30	7.9	0.5	011	1
12/10/11	8.0	0.005	8680	100	200	8.0	15.5	001	1
12/13/11	6.0	0.004	9018	100	200	7.8	3.2	001	1
12/14/11	5.0	0.003	8850	100	200	7.6	1.8	001	1
1/12/12	17.0	0.011	9686	100	200	8.2	3.6	011	1
1/18/12	11.0	0.007	8684	100	200	7.6	2.0	011	l
1/20/12	3.0	0.002	10020	100	200	7.5	2.8	011	1
1/24/12	3.2	0.002	9520	100	200	7.4	0.8	011	1
1/26/12	3.2	0.002	9690	100	200	7.3	1.8	011	1
7/13/12	5.0	0.002	3955	4	20	7.1	.5	011	1
7/14/12	5.0	0.002	5040	4	20	7.1	.5	011	1
7/15/12	5.0	0.002	5040	4	20	7.1	.5	011	1
7/16/12	5.0	0.002	3990	4	20	7.1	.5	011	1

[•] violations of purported tolytriazole limit.

Sec. B: Discharge of TSS and oil and grease from unpermitted storm drain in violation of CWA §§ 1311(a) and 1341					
SAMPLING MONTH	TSS in effluent?	Oil & Grease in effluent?	Days of Violation		
May 1997	Yes	Yes	1		
October 1997	Yes	Yes	1		
April 1998	Yes	Yes	1		
September 1998	Yes	No	1		
May 1999	Yes	No	1		
September 1999	Yes	No	1		
April 2000	Yes	Yes	1		
April 2001	Yes	Yes	1		
September 2000	Yes	Yes	1		
July 2001	Yes	Yes	1		
September 2001	Yes	Yes	1		
April 2002	Yes	Yes	1		
September 2002	Yes	Yes	1		
April 2003	Yes	Yes	1		
April 2004	Yes	Yes	1		
September 2004	Yes	Yes	1		
April 2005	Yes	Yes	1		
April 2007	Yes	Yes	1		
November 2007	Yes	Yes	1		
June 2009	Yes	Yes	1		
November 2010	Yes	Yes	1		
	TOTAL DAYS	OF VIOLATION: 21	•		

Sec. C: Ongoing violation of chlorine (TRO) limit for condenser cooling water discharge at Outfall 001: CWA § 1342 and 1994 Permit, part (A)(1)(a)(1)					
Date	Maximum Daily TRO (limit .1 mg/l)	Days of Violation			
3/21/01	0.18	1			
2/1/05	0.18	1			
12/14/11	0.14	1			
	TOTAL DAYS OF VIOLATION:	3			

Dec-96 Jan-97 2/18/97 Feb-97 Mar-97	"periodic violations of permit requirements prior to dilution" "periodic violations of permit requirements prior to dilution"	Days of Violation (Each month is considered one day except where noted	
2/18/97 Feb-97 Mar-97	"namiadia vialatiana of namit requirements microta dilutian"	1	
Feb-97 Mar-97	periodic violations of permit requirements prior to dilution	1	
Mar-97	1.47	1	
	"periodic violations of permit requirements prior to dilution"	1	
A 0.77	"periodic violations of permit requirements prior to dilution"	1	
Apr-97	"periodic violations of permit requirements prior to dilution"	1	
May-97	"periodic violations of permit requirements prior to dilution"	1	
Jun-97	"periodic violations of permit requirements prior to dilution"	1	
Jul-97	"periodic violations of permit requirements prior to dilution"	1	
Aug-97	"periodic violations of permit requirements prior to dilution"	1	
Sep-97	"periodic violations of permit requirements prior to dilution"	1	
Oct-97	"periodic violations of permit requirements prior to dilution"	1	
Nov-97	"periodic violations of permit requirements prior to dilution"	1	
Dec-97	"periodic violations of permit requirements prior to dilution"	1	
Jan-98	"periodic violations of permit requirements prior to dilution"	1	
Feb-98	"periodic violations of permit requirements prior to dilution"	1	
Mar-98	"periodic violations of permit requirements prior to dilution"	1	
Apr-98	"periodic violations of permit requirements prior to dilution"	1	
May-98	"periodic violations of permit requirements prior to dilution"	1	
Jun-98	"periodic violations of permit requirements prior to dilution"	1	
Jul-98	"periodic violations of permit requirements prior to dilution"	1	
Aug-98	"periodic violations of permit requirements prior to dilution"	1	
Sep-98	"periodic violations of permit requirements prior to dilution"	1	
Oct-98	"periodic violations of permit requirements prior to dilution"	1	
Jan-99	"periodic violations of permit requirements prior to dilution"	1	
Feb-99	"periodic violations of permit requirements prior to dilution"	1	
Mar-99	"periodic violations of permit requirements prior to dilution"	1	
Apr-99	"periodic violations of permit requirements prior to dilution"	1	
May-99	"periodic violations of permit requirements prior to dilution"	1	
Jun-99	"periodic violations of permit requirements prior to dilution"	1	
Jul-99	"periodic violations of permit requirements prior to dilution"	1	
Aug-99	"periodic violations of permit requirements prior to dilution"	1	
Sep-99	"periodic violations of permit requirements prior to dilution"	1	
Oct-99	"periodic violations of permit requirements prior to dilution"	1	
Nov-99	"periodic violations of permit requirements prior to dilution"	1	
Dec-99	"periodic violations of permit requirements prior to dilution"	1	
Jan-00	"periodic violations of permit requirements prior to dilution"	1	
Feb-00	"periodic violations of permit requirements prior to dilution"	1	
Mar-00	"periodic violations of permit requirements prior to dilution"	1	
Apr-00	"periodic violations of permit requirements prior to dilution"	1	
5/14/01	1.11	1	
8/25/06	1.05	1	
2/19/08	1.25	1	
3/31/10	1.03	1	
11/27/10	2.4	1	
4/5/11 7/20/11	1.3	1	

Sec. E: Ongoing violations of monitoring and reporting requirement for pH level in condenser cooling water discharge at Outfall 001: CWA § 1342 and 1994 Permit, Part (A)(2)(a)

Dates	Monitored/Reported pH of intake water and effluent?	Days of Violation
8/30/94-12/31/94	No	123
1/1/95-12/31/95	No	365
1/1/96-12/31/96	No	366
1/1/97-12/31/97	No	365
1/1/98-12/31/98	No	365
1/1/99-12/31/99	No	365
1/1/00-12/31/00	No	366
1/1/01-12/31/01	No	365
1/1/02-12/31/02	No	365
1/1/03-12/31/03	No	365
1/1/04-12/31/04	No	366
1/1/05-12/31/05	No	365
1/1/06-12/31/06	No	365
1/1/07-12/31/07	No	365
1/1/08-12/31/08	No	366
1/1/09-12/31/09	No	365
1/1/10-12/31/10	No	365
1/1/11-12/31/11	No	365
1/1/12-7/31/12	No	213

Sec. F: Ongoing violations of monitoring and reporting requirement for pH of thermal backwash discharges from Outfall 002: CWA § 1342 and 1994 Permit, Part (A)(3)

Dates	Thermal Backwashing Event?	Monitored/Reported pH of intake water and effluent?	Days of Violation
9/17/01	Yes	No	1
9/18/01	Yes	No	1
5/30/02	Yes	No	1
7/17/02	Yes	No	1
12/3/02	Yes	No	1
6/12/03	Yes	No	1
8/7/03	Yes	No	1
9/29/03	Yes	No	1
11/25/03	Yes	No	1
3/22/04	Yes	No	1
6/3/04	Yes	No	1
6/4/04	Yes	No	1
7/30/04	Yes	No	1
7/31/04	Yes	No	1
6/28/05	Yes	No	1
8/24/05	Yes	No	1
11/3/05	Yes	No	1
3/10/06	Yes	No	1
6/21/06	Yes	No	1

Yes	Monitored/Reported pH of intake water and effluent? No No No No No No No	Days of Violation
Yes Yes Yes Yes Yes Yes	No No No	1 1 1
Yes Yes Yes Yes	No No	1 1 1
Yes Yes Yes	No	1 1
Yes Yes		1
Yes	No	·
		1
3.7	No	1
Yes	No	1
	Yes Yes Yes Yes Yes Yes Yes Yes Yes	Yes No Yes No Yes No Yes No Yes No Yes No

Sec. G. Ongoing Violations of monitoring and reporting requirements for pH of
intake screen wash (fish sluice water) discharge at Outfall 003: CWA § 1342 and 1994
Permit, Part (A)(4)(e)

Dates	# Weeks	Monitored/Reported pH of intake water and effluent?	Days of Violation (3x/week)
8/30/94-12/31/94	17	No	51
1/1/95-12/31/95	52	No	156
1/1/96-12/31/96	52	No	156
1/1/97-12/31/97	52	No	156
1/1/98-12/31/98	52	No	156
1/1/99-12/31/99	52	No	156
1/1/00-12/31/00	52	No	156
1/1/01-12/31/01	52	No	156
1/1/02-12/31/02	52	No	156
1/1/03-12/31/03	52	No	156
1/1/04-12/31/04	52	No	156
1/1/05-12/31/05	52	No	156
1/1/06-12/31/06	52	No	156
1/1/07-12/31/07	52	No	156
1/1/08-12/31/08	52	No	156
1/1/09-12/31/09	52	No	156
1/1/10-12/31/10	52	No	156
1/1/11-12/31/11	52	No	156
1/1/12-7/31/12	30	No	90
	TOTAL	L DAYS OF VIOLATION: 2,79	93

Outfalls 004, 005, 006 and/or 007: CWA § 1342 and 1994 Permit, Part (A)(7)(f)						
SAMPLING MONTH	Monitored/Reported ambient and effluent pH?	Days of Violation				
May 1997	No	1				
October 1997	No	1				
April 1998	No	1				
September 1998	No	1				
May 1999	No	1				
September 1999	No	1				
April 2000	No	1				
September 2000	No	1				
April 2001	No	1				
July 2001	No	1				
September 2001	No	1				
April 2002	No	1				
September 2002	No	1				
April 2003	No	1				
April 2004	No	1				
September 2004	No	1				
April 2005	No	1				
April 2007	No	1				
November 2007	No	1				
June 2009	No	1				
November 2010	No	1				

Part (A)(1)(g)						
Dates	Monitored hourly temperature delta?	Days of Violation				
8/30/94-12/31/94	No	123				
1/1/95-12/31/95	No	365				
1/1/96-12/31/96	No	366				
1/1/97-12/31/97	No	365				
1/1/98-12/31/98	No	365				
1/1/99-12/31/99	No	365				
1/1/00-12/31/00	No	366				
1/1/01-12/31/01	No	365				
1/1/02-12/31/02	No	365				
1/1/03-12/31/03	No	365				
1/1/04-12/31/04	No	366				
1/1/05-12/31/05	No	365				
1/1/06-12/31/06	No	365				
1/1/07-12/31/07	No	365				
1/1/08-12/31/08	No	366				
1/1/09-12/31/09	No	365				
1/1/10-12/31/10	No	365				
1/1/11-12/31/11	No No	365				
1/1/12-7/31/12	No	213				

Sec. J: Ongoing violation of monitoring and reporting requirements for temperature of intake screen wash (fish sluice water) discharge at Outfall 003: CWA § 1342 and 1994 Permit, Part (A)(4)(b)

Dates	# Weeks	Monitored/Reported temperature of intake water?	Days of Violation (3x/week)
8/30/94-12/31/94	17	No	51
1/1/95-12/31/95	52	No	156
1/1/96-12/31/96	52	No	156
1/1/97-12/31/97	52	No	156
1/1/98-12/31/98	52	No	156
1/1/99-12/31/99	52	No	156
1/1/00-12/31/00	52	No	156
1/1/01-12/31/01	52	No	156
1/1/02-12/31/02	52	No	156
1/1/03-12/31/03	52	No	156
1/1/04-12/31/04	52	No	156
1/1/05-12/31/05	52	No	156
1/1/06-12/31/06	52	No	156
1/1/07-12/31/07	52	No	156
1/1/08-12/31/08	52	No	156
1/1/09-12/31/09	52	No	156
1/1/10-12/31/10	52	No	156
1/1/11-12/31/11	52	No	156
1/1/12-7/31/12	30	No	90

Sec. K: Ongoing Violation of monitoring and reporting requirements for chlorine (TRO) in condenser cooling water discharge at Outfall 001: CWA § 1342 and 1994 Permit, Part (A)(2)(a)

Year	Days of Chlorination (2 hrs/day)	Continuous Chlorine Sampling?	Days of Violation
1997	Not Reported	No	X
1998	Not Reported	No	X
1999	Not Reported	No	X
2000	Not Reported	No	X
2001	Not Reported	No	X
2002	260	No	260
2003	296	No	296
JanApr. '04	Not Reported	No	X
May-Dec. '04	210	No	210
2005	202	No	202
2006	191	No	191
2007	165	No	165
2008	192	No	192
2009	169	No	169
2010	207	No	207
2011	179	No	179
JanJuly. '12	83	No	83

Sec. L. Ongoing violation of monitoring and reporting requirements for chlorine (TRO) in service cooling water discharge at Outfall 010: CWA § 1342 and 1994 Permit, Part (A)(5)(a)

Dates	Continuous Chlorine Sampling?	Days of Violation
8/27/98-12/31/98	No	125
1/1/99-12/31/99	No	365
1/1/00-12/31/00	No	366
1/1/01-12/31/01	No	365
1/1/02-12/31/02	No	365
1/1/03-12/31/03	No	365
1/1/04-12/31/04	No	366
1/1/05-12/31/05	No	365
1/1/06-12/31/06	No	365
1/1/07-12/31/07	No	365
1/1/08-12/31/08	No	366
1/1/09-12/31/09	No	365
1/1/10-12/31/10	No	365
1/1/11-12/31/11	No	365
1/1/12-7/31/12	No	213
1/1/12-7/31/12		

Sec. M. Ongoing violation of permit condition requiring an approved Annual Environmental Monitoring Program carried out under the oversight of the PATC: CWA § 1342 and 1994 Permit, Part (A)(8)(b)-(e)

Dates	Approved Environmental Monitoring Program?	Days of Violation
1/1/02-12/31/02	No	365
1/1/03-12/31/03	No	365
1/1/04-12/31/04	No	366
1/1/05-12/31/05	No	365
1/1/06-12/31/06	No	365
1/1/07-12/31/07	No	365
1/1/08-12/31/08	No	366
1/1/09-12/31/09	No	365
1/1/10-12/31/10	No	365
1/1/11-12/31/11	No	365
1/1/12-7/31/12	No	213
	TOTAL DAYS OF VIOLATION: 3,865	

Sec. N. Ongoing violation of permit condition requiring collection and reporting of benthic monitoring data: CWA § 1342 and 1994 Permit, Parts (A)(1)(h) and (A)(8)(d) and Part I.D. of the Marine Environmental Monitoring Program

Dates	Performed Benthic Monitoring?	Days of Violation	Performed Transect Monitoring?	Days of Violation
2000	No	2	No	4
2001	No	2	No	4
2002	No	2	No	4
2003	No	2	No	4
2004	No	2	No	4
2005	No	2	No	4
2006	No	2	No	4
2007	No	2	No	4
2008	No	2	No	4
2009	No	2	No	4
2010	No	2	No	4
2011	No	2	No	4
2012	No	1	No	2

Sec. O: Ongoing violation of permit conditions for protection of fish from gas bubble
disease: CWA § 1342 and 1994 Permit, Parts (A)(2)(e) and (f)

Year	Barrier Net in Place?	Average Dissolved Nitrogen Saturation Level of < 115%?	Days of Violation (AprNov. of each year)
2000	No	Not Monitored or Reported	244
2001	No	Not Monitored or Reported	244
2002	No	Not Monitored or Reported	244
2003	No	Not Monitored or Reported	244
2004	No	Not Monitored or Reported	244
2005	No	Not Monitored or Reported	244
2006	No	Not Monitored or Reported	244
2007	No	Not Monitored or Reported	244
2008	No	Not Monitored or Reported	244
2009	No	Not Monitored or Reported	244
2010	No	Not Monitored or Reported	244
2011	No	Not Monitored or Reported	244
2012 (Apr.1- July 31)	No	Not Monitored or Reported	122

TOTAL: COMBINED TOTAL DAYS OF VIOLATION			
Exhibit Section	Days of Violation	Penalty per Section	
A	220	\$5,500,000	
В	21	\$525,000	
C	3	\$75,000	
D	47	\$1,175,000	
E	6,545	\$163,625,000	
F	41	\$1,025,000	
G	\$69,825,000		
Н	21	\$525,000	
I	6,545	\$163,625,000	
J	2,793	\$69,825,000	
K	2,154	\$53,850,000	
L	5,086	\$127,150,000	
M	3,865	\$96,625,000	
N	69	\$1,725,000	
0	3,050	\$76,250,000	
COMBINED TOTAL DAYS OF VIOLATION: 33,253			
Penalty per day of violation: \$25,000			
TOTAL PENALTY FOR ALL VIOLATIONS: \$831,325,000			

Complainant's Exhibit 2

Clean Water Act, § 505 Notice of Intent to Initiate Citizen Suit
Pilgrim Nuclear Power Station, Plymouth, Massachusetts, NPDES Permit No. MA
0000355

-//

UNITED STATES ENVIRONMENTAL PROTECTION STATES

Pile of

June 30, 1995

E.T. Boulette, PhD Senior Vice President - Nuclear Boston Edison Pilgrim Nuclear Power Station Rocky Point Road Plymouth, Massachusetts 02360

Re: Pilgrim Nuclear Power Station (PNPS), NPDES Permit No. MA0003557 Use of Tolytriazole as a Corrosion Inhibitor

Dear Dr. Boulette:

In your letter of May 22, 1995, you have requested approval to add Tolytriazole, a corrosion inhibitor, to the reactor building and turbine building closed cooling-water systems; station-heating and the emergency diesel generator cooling-water systems. This material has been recommended for use by the Institute of Nuclear Power Operations (INPO) for corrosion control of copper alloys.

Initial conditioning of the cooling systems would require a Tolytriazole maximum concentration 20 mg/l, after which concentrations would be maintained at 2 mg/l. The maximum concentration would be in the neutralizer sump.

At the facility, Tolytriazole would be discharged from PNPS' Outfall 011 only during scheduled plant outages, and during any unplanned system maintenance evolutions. In a "worst-case scenario", 200 GPM (maximum flow) of the Tolytriazole effluent would be diluted with 1500 GPM (minimum flow) of service water, prior to discharge to Cape Cod Bay. The Tolytriazole concentration of the effluent would be approximately 2.35 mg/l. If one of the circulating water pumps is operational during an outage, the Tolytriazole discharge would further be diluted with 155,000 GPM of Bay water, yielding an effective Tolytriazole discharge concentration of 0,03 mg/l.

Acute and chronic toxicity testing results in the vendor's
Material Safety Data Sheets (MSDS) on Tolytriazole [or COBRATEC,
17-30-5], indicate that the Toxicity poster concentration in a
WHEOL WORLD SCENARIO LISCHARY IS DETON BOTH THE ACUTE AND
DATE 630/15 1495

EPA Form 1320-14 (1/90)

Printed on Recycled Paper

OFFICIAL FILE COPY

Based on actual acute and chronic toxicity testing results, the "worst-case scenario" discharge concentrations, additional dilution from the circulating water pump, the use of Tolytriazole is approved at the requested dosage rate. Any change in the dosage rate or active ingredient concentration must be approved by EPA and the State prior to usage.

Should you have any questions, please contact Nick Prodany of my staff at 617-565-3587.

Sincerely,

Edward K. McSweeney, Chief Wastewater Management Branch

cc: R: Anderson, PNPS
Paul Hogan, MA DEP
S. Silva, EPA
Region 1, NRC
Document Control Desk, NRC

- MR & HINDERSON
PRINCIPAL MARINE BISHOGIST
BOSTON EDISON
PILBRIM NUCLEAR ROWER STATION
ROCKY POINT ROAD
PLYMONTH, MA 02360

Complainant's Exhibit 3

Clean Water Act, § 505 Notice of Intent to Initiate Citizen Suit
Pilgrim Nuclear Power Station, Plymouth, Massachusetts, NPDES Permit No. MA
0000355



Přigrim Nuclear Power Station Rocky Hill Road Plymouth, Massachusetts 02360

E. T. Boulette, PhD Senior Vice President - Nuclear

October 25, 1995 5.95.088

M72/15

Mr. Kevin McSweeney, Chief Compliance Branch U. S. Environmental Protection Agency J.F.K. Federal Building Boston, MA 02203

Attn: Ms. Olga Vergara

Re: NPDES Permit Renewal Application

Pilgrim Station

Dear Mr. McSweeney:

In accordance with the Consolidated Permits Regulations under Title 40, Code of Federal Regulations, Parts 122, 123, 124 and 125 (Revised July 1, 1994), Boston Edison is applying for renewal of our National Pollutant Discharge Elimination System (NPDES) Permit under the Clean Water Act using Forms 1 and 2C of the consolidated permits application forms at Pilgrim Nuclear Power Station (NPDES #MA0003557). Comments are noted below:

- Similar to Boston Edison Company's previous permit application in 1990 for our current Pilgrim Station NPDES Permit, the following requests and information are provided regarding this renewal application:
 - A. Outfalls 001 (Condenser Cooling Water), 002 (Thermal Backwash), and 010 (Plant Service Cooling Water) are once-through discharge points whose sole source of water is the Cape Cod Bay. Therefore, we believe that they should be classified as identical outfalls. Outfalls 003 (Intake Screen Wash) and 008 (Sea Foam Suppression) utilize Cape Cod Bay water and/or Plymouth town water stored as Pilgrim Fire Water. For the pollutants listed in Parts B and C of Item V, we believe that, except for ambient levels, they are generally not present for these discharge points. Therefore, we would like the sampling requirements for these pollutants, at these outfalls, generally suspended. It is also requested that sampling/analysis be waived for BOD, COD, TOC, TSS and ammonia at 001, 002, 003, 008 and 010 outfalls because they are non-process industrial discharge whose water source is classified as SA quality or potable water and are, therefore, not expected to influence these parameters.

Mr. Kevin McSweeney U.S. Environmental Protection Agency October 25, 1995 Page Two

- B. For outfall numbers 001, 002, 003, 008 and 010, limited analyses were performed. For outfall number 001, the discharge is only treated with chlorine which is required to be monitored and not exceed 0.1 ppm TRC. Similarly, nothing is chemically added to 002 or 008, only sodium thiosulfate is added to 003 as a dechlorination agent, and only chlorine is added to 010 with chlorination monitoring required to maintain permit limits of 0.5 ppm daily average and 1.0 ppm daily maximum TRC, prior to mixing with condenser cooling waters. Analyses for cobalt, iron and titanium were performed for outfall numbers 001, 002 and 010 because there was a possibility of these constituents being present. An analysis for sulfate was performed for outfall number 003 because of the sodium thiosulfate addition. Protocol references and sampling strategies are noted in Attachment A.
- C. For all outfalls in Item V Parts B and C, we have marked an "X" in the "believed present" or "believed absent" column for pollutant.
- D. All temperature and pH data were taken from actual operating data rather than from grab samples.
- 2) The following changes have been adopted in the permit since the last application:
 - A. A modification of the Pilgrim Station NPDES permit was approved and issued effective August 30, 1994, containing various discharge changes.
 - B. A letter from EPA to Boston Edison dated June 30, 1995, approved the use of Tolytriazole, a corrosion inhibitor, in various Pilgrim Station systems.
 - C. Via telecon between the EPA and Boston Edison on December 16, 1994, (BECo Telecon #4.94.038), approval was granted to use Pilgrim Station storm drain #007 for the intermittent discharge of untreated seawater from the condenser scavenger tank.
- Boston Edison requests that the five storm drains, Outfalls 004, 005, 006, 007, and a miscellaneous storm drain, be covered under the NPDES General Permit for Storm Water Discharges Associated with Industrial Activity (Permit No. MAR000000) upon expiration of the current NPDES permit. The Massachusetts Department of Environmental Protection has formally determined that the storm water discharges at the facility can be covered under the General Permit per the September 11, 1995, letter from Paul Hogan (Attachment B). Two days prior to expiration of the current NPDES permit, a Notice of Intent (NOI) will be submitted to EPA per Part II of the Preface of the General Permit.

Mr. Kevin McSweeney U.S. Environmental Protection Agency October 25, 1995 Page Three

- A. The miscellaneous storm drain located at the boat launch between Outfalls 006 and 007 was noted during a recent site visit. It drains a small portion of the facility which is similar to the drainage areas for Outfalls 004, 005, 006 and 007. Stormwater runoff from the miscellaneous outfall is expected, therefore, to be similar to runoff from the other four outfalls.
- 4) The impacts associated with the Pilgrim Station 316(a) and 316(b) demonstration document (July 1975) and supplement (September 1977), submitted in conformance with Federal Water Pollution Control Act (The Clean Water Act), have not changed significantly.
- 5) Pilgrim Station discharges in the coastal zone comply with the policies of the Massachusetts approved coastal management program and will be conducted in a manner consistent with such policies.

I trust that these additional comments will meet your requirements and that our application is complete.

If you have any questions, please contact Mr. Robert D. Anderson of my staff at (508) 830-7935.

E. T. Boulette, PhD Senior Vice President - Nuclear

cc: Mr. Paul Hogan
Massachusetts Department of Environmental Protection
Regulatory Branch - 7th Floor
One Winter Street
Boston, MA 02108

Mr. Rick Zeroka Massachusetts Coastal Zone Management 100 Cambridge Street, Floor 20 Boston, MA 02202

U.S. Nuclear Regulatory Commission Region I 475 Allendale Road King of Prussia, PA 19406

U.S. Nuclear Regulatory Commission Attn: Document Control Desk Washington, DC 20555

Senior Resident Inspector, Pilgrim Station

Complainant's Exhibit 4

Clean Water Act, § 505 Notice of Intent to Initiate Citizen Suit
Pilgrim Nuclear Power Station, Plymouth, Massachusetts, NPDES Permit No. MA
0000355

FILE COPY

August 26, 1998

E.T. Boulette, PhD Senior Vice President-Nuclear Boston Edison Pilgrim Nuclear Power Station Rocky Hill Road Plymouth, MA 02360-5599

Re: Pilgrim Nuclear Power Station, NPDES Permit No. MA0003557, Sampling of Service Salt Water System

Dear Dr. Boulette:

This letter is in response to your letter of October 3, 1997, relating to Boston Edison Company's (BECo) request to permanently substitute a daily-grab sampling procedure in place of the existing continuous chlorination sampling procedure for Pilgrim Nuclear Power Station's (PNPS) service salt water system (SSWS).

According to your letter, PNPS is requesting this change in sampling procedure for the following reasons:

- The use of continuous flow from the SSWS piping which supplies the continuous chlorination monitoring system has been noted to be a seismic integrity concern in accordance with the guidelines of the USNRC Generic Letter #89-13. This concern has been addressed by cutting and capping the pipes which constitute the SSWS/continuous chlorine monitor interface.
- Samples for permit compliance are taken in the SSWS prior to commingling the service water with the non-contact cooling water (NCCW). The system is not chlorinated unless, at a minimum, one (1) circulating water system (CWS) pump [Which supplies approximately a 15:1 dilution ratio] is running; more often, however, two (2) CWS pumps (which supply approximately a 30:1 dilution ratio] are operating. Upon commingling with the NCCW, the chlorine (or TRO) concentration in the service water is reduced substantially below the permit effluent discharge limit of 0.1 ppm.

Based on the information you have provided and the existing NPDES permit limits and conditions, the requested change in sampling procedure will not cause any changes in the environmental impact of Discharge 010 or of Discharge 001. Therefore, EPA approves the change in sampling procedure on the condition that a minimum of two (2) grab samples are taken daily, when the service water system/discharge is in use.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

-2-

EPA does not have the resources to immediately initiate the administrative procedures for this minor modification to the permit at this time; however, you may implement this change in operations at your convenience.

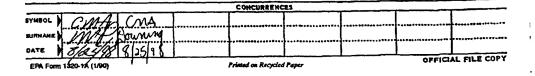
This approved change will be included in the next reissuance of the NPDES permit for PNPS.

Should you have any questions concerning this letter, please call Nick Prodany of my staff at 617-565-3513.

Sincerely,

Jane Downing, Director Massachusetts Office of Ecosystem Protection

CC: C. Chow, EPA
Roger Janson, EPA
Leigh Bridges, MA DMF
Robert Lawton, MA DMF
B. Firmin, MA DEP
Robert Anderson, BECO



ECOLAW P.O. Box 380083 CAMBRIDGE, MA 02238 Tel. 508-259-9154

October 5, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Commissioner Kenneth L. Kimmel Massachusetts Department of Environmental Protection One Winter Street, Second Floor Boston, MA 02108

Martha Coakley Attorney General One Ashburton Place, 20th Floor Boston, MA 02108

John T. Herron, President Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. 1340 Echelon Parkway Jackson, MS 39213

C.T. Corporation System 155 Federal St., Suite 700 Boston, MA 02110

David Noyes, Operations Manager Robert Smith, Site Vice President Pilgrim Nuclear Power Station 600 Rocky Hill Road Plymouth, MA 02360

Re: Written Notification of Damage to the Environment, G.L. c. 214, § 7A
Pilgrim Nuclear Power Station, Plymouth, MA: NPDES Permit No. MA 0000355

Dear Commissioner Kimmell, Attorney General Coakley, and Entergy representatives;

As the authorized representatives of a group of more than ten "persons domiciled within the Commonwealth," we are providing you with notice of the intent of the

¹ Under G.L. c. 214, § 7A, "person' shall mean any individual, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or any political subdivision thereof, any administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representatives, agents or assigns." Under G.L. c. 214, § 7A, any group of not less than ten persons

undersigned group of more than ten persons to commence an action pursuant to G.L. c. 214, § 7A, against the Department of Environmental Protection (the Department) and Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively referred to as Entergy) for damage to the environment that is occurring or is about to occur as a result of actions and/or failures to act by Entergy and the Department in connection with operations at the Pilgrim Nuclear Power Station (PNPS) in Plymouth.

Under G.L. c. 214, § 7A, any group of not less than ten persons domiciled within the Commonwealth may bring a lawsuit in Superior Court to prevent damage to the environment. "Damage to the environment" is defined to include "any destruction, damage or impairment, actual or probable, to any of the natural resources of the commonwealth" and explicitly includes water pollution and impairment of water resources.

G.L. c. 214, § 7A provides an action may be brought when the damage to the environment "constitutes a violation of a statute...or regulation the major purpose of which is to prevent or minimize damage to the environment." The Department and/or Entergy have violated and continue to violate the following statutes and regulations the major purposes of which are to prevent or minimize damage to the environment: Massachusetts Clean Waters Act, G.L. c. 21, §§ 26-53, and its implementing regulations at 314 C.M.R. 2.0 (Permit Procedures), 314 CMR 3.00 (Surface Water Permits), and 314 C.M.R. 4.00 (Water Quality Standards); the Department's enabling statute at G.L.c. 21A, § 8; and, the federal Clean Water Act, 33 U.S.C. § 1341. These violations interfere with the rights of the group of ten or more persons to a clean environment under Article 97 of the Massachusetts Constitution.

Article 97 of the Massachusetts Constitution states,

"The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic and esthetic qualities of their environment."

The violations are described more fully below.

I. Clean Water Act permit violations

The Department and the U.S. Environmental Protection Agency (EPA) have issued a joint permit for PNPS under the federal Clean Water Act NPDES program. This permit authorizes Entergy to discharge pollutants to Cape Cod Bay, subject to pollution limits and conditions. The NPDES is also a permit issued by the Department under the Massachusetts Clean Waters Act, as amended, M.G. L. c. 21, §§ 26-53. The NPDES permit expired in 1994, 16 years ago, but has been unlawfully extended by EPA.

domiciled within the Commonwealth is authorized to bring an action in Superior Court to prevent damage to the environment.

² EPA and DEP have a joint permit agreement governing the NPDES permit program. See, Agreement between EPA and Massachusetts Department of Water Pollution Control" (March 18, 1973). The NPDES permit for Pilgrim was renewed and reissued in 1988 and in 1991. On August 30, 1994, EPA modified the 1991 permit through a formal notice and comment process. The 1994 Permit was due to

Entergy has violated and continues to violate the terms of the NPDES permit, as described more fully in the attached letter to the U.S. EPA and others (Clean Water Act, § 505 Notice of Intent to Initiate Citizen Suit for Violations at Pilgrim Nuclear Power Station, Plymouth, Massachusetts (§ 505 NOI Letter)). The § 505 NOI Letter is incorporated by reference herein.

The violations described in the § 505 NOI Letter constitute violations of the Massachusetts Clean Waters Act, G.L. c. 21, §§ 26-53, and its implementing regulations. Entergy is strictly liable for the violations described in the § 505 NOI Letter and these violations constitute *per se* damage to the environment.

The Massachusetts Clean Waters Act provides that "[a]ny person who, directly or indirectly throws, drains, runs, discharges or allows the discharge of any pollutant into waters of the commonwealth except in conformity with a permit issued under section forty-three, or who violates any provision of this chapter, any valid regulation, order or permit prescribed or issued by the director thereunder...." shall be liabile for a civil penalty not to exceed \$50,000 per day of such violation. G.L. c. 21, § 42. Entergy has violated and continues to violate §§ 42 and 43.

The Department has the duty to enforce the terms and conditions of the PNPS NPDES permit and to enforce the Massachusetts Clean Waters Act. The Act says it "shall be the duty and responsibility of the division [of water pollution control, within the Department] to enhance the quality and value of water resources and to establish a program for the prevention, control, and abatement of water pollution." G.L. c. 21, § 27.

The Department also has a duty under its enabling statute, G.L. c. 21A, § 8, to "minimize and prevent damage or threat of damage to the environment."

By ignoring Entergy's violations of the Massachusetts Clean Waters Act, and by failing to prevent water pollution and the impairment of Cape Cod Bay, the Department is violating and continues to violate its duties under the Act, G.L. c. 21, § 27 and its enabling statute, G.L. c. 21A, § 8, causing damage to the environment.

II. Water Quality Standards

The Massachusetts Clean Waters Act regulations set minimum water quality standards, and no person may violate the standards. The water quality standard for Cape Cod Bay is "Class SA" which means,

"These waters are designated as an excellent habitat for fish, other aquatic life and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation. In certain waters,

expire in 1996, at the end of the five-year term that started in 1991, but has been administratively extended by EPA for over sixteen years. EPA contends that the NPDES permit remains in effect pursuant to administrative extension provisions of 40 C.F.R. § 122.6. The Department has taken no action on the permit.

excellent habitat for fish, other aquatic life and wildlife may include, but is not limited to, seagrass. Where designated in the tables to 314 CMR 4.00 for shellfishing, these waters shall be suitable for shellfish harvesting without depuration (Approved and Conditionally Approved Shellfish Areas). These waters shall have excellent aesthetic value."

G.L. c. 21, § 27; 314 CMR 4.05(4)(a).

Entergy discharges up to 510 million gallons per day of heated water to Cape Cod Bay. During normal operations, this water is up to 32 degrees Farenheit hotter than the water in Cape Cod Bay. During periodic operations to clean the pipes, Entergy discharges water that is up to 120 degrees into Cape Cod Bay. The Department has granted Entergy a variance from water quality standards and allows Entergy to discharge this thermal pollution to Cape Cod Bay. See, 33 U.S.C. § 1326 and 314 CMR 3.00. However, both the federal CWA and the Massachusetts Clean Waters Act require the Department to ensure that Entergy's thermal pollution "continue[s] to comply with the variance standard for thermal discharges." The Department has failed to require Entergy to support the continuation of the thermal pollution variance with studies based on the actual operating experience at PNPS, as required by 314 CMR 3.00, and has failed to require Entergy to otherwise meet the criteria under 314 CMR 3.00 for a variance. See also, 314 CMR 4.05(a)(2)(c).

As to Entergy's cooling water intake structure (CWIS), the Department has failed to exercise its authority under G.L. c. 21, §§ 26-53 and 314 CMR 3.00 and 4.00 to condition Entergy's CWIS operations to assure compliance of the withdrawal activity with 314 CMR 4.00, including, but not limited to, the water quality standard for Cape Cod Bay.

The Department has allowed and continues to allow Entergy to operate PNPS with an expired NPDES permit and has failed to show that the continued operation of PNPS complies with the water quality standard for Cape Cod Bay, as demonstrated in the § 505 NOI Letter and as stated above. Entergy's failure to demonstrate compliance with the water quality standards and the Department's failure to enforce the water quality standards is causing and/or will cause damage to the environment by causing or contributing to water pollution in Cape Cod Bay.

III. § 401 Certification

Under 33 U.S.C.§ 1341 (§ 401), Massachusetts must certify to EPA that Entergy's pollutant discharges to Cape Cod Bay under the NPDES permit will comply with state effluent limits and standards under the federal CWA, § 1311. By letter dated July 8, 1994, Massachusetts certified to EPA that Entergy's operation of PNPS in a manner consistent with its NPDES permit will constitute compliance with the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53 (§ 401 Certificate).

As shown in the § 505 NOI Letter, Entergy is violating and continues to violate the effluent limits and standards under the federal CWA, § 1311. Therefore, the Department's § 401 Certificate is invalid because Entergy is not operating PNPS in a manner consistent with its NPDES permit and is violating effluent limits. By failing to revoke the § 401 Certificate, the Department is violating the Massachusetts Clean Waters Act, which imposes a duty and responsibility on the Department "to enhance the quality and value of water resources...." G.L. c. 21, § 27. The Department is also violating its duty under G.L. c. 21A, § 8 to "minimize and prevent damage or threat of damage to the environment" by failing to revoke the § 401 Certificate.

Conclusion

As shown above in Parts I – III, Entergy and the Department are violating statutes and regulations the major purposes of which are to prevent or minimize damage to the environment. The violations by Entergy and the Department constitute damage to the environment and interfere with the rights of the ten or more undersigned persons to a clean environment under Article 97 of the Massachusetts Constitution. The undersigned ten or more persons providing this notice pursuant to G.L. c. 214, § 7A intend to bring a civil action in Superior Court pursuant to that statute at least twenty-one days after this notice to seek equitable or declaratory relief concerning the violations and imminent violations described herein. Other parties or causes of action other than G.L. c. 214, § 7A, may be included in the Superior Court civil action.

This notice letter shall not in any limit the rights of any of the ten or more persons who are signatories hereto, or of any other person, to initiate a cause of action under G.L. c. 214, § 7A or another other law, with regard to PNPS or Entergy's operations thereof. Rights to bring such an action are explicitly reserved.

Should you have any questions about this letter, please contact either Attorney Sheehan or Attorney Bingham.

Submitted by,

Margaret E. Sheehan, Esq.

anne Buncho

meg@ecolaw.biz

Anne Bingham, Esq.\(\frac{1}{2}\)

annebinghamlaw@comcast.net

Genevieve Byrne, Esq.

genevieve@ecolaw.biz

On behalf of the following persons domiciled in the Commonwealth:

Norman Pierce	166 Morgan Road, Plymouth, MA 02360	
Pine duBois	93 Elm St., Kingston, MA 02364	
Richard S. Wickenden, II	627 Long Pond Road, Plymouth, MA	
	02360	
Phyllis J. Troia, M.D.	627 Long Pond Road, Plymouth, MA	
	02360	
Theodore L. Bosen, Esq.	69 Janebar Circle, Plymouth, MA 02360	
Sharl Heller	201 Center Hill Road, Plymouth, MA	
	02360	
Eric Heller	201 Center Hill Road, Plymouth, MA	
	02360	
Anna Baker	1009 Union Street, Marshfield, MA	
David Agnew	18 Martha's Lane, Harwich, MA 02645	
Joyce A. Johnson	82 Lakeview Ave., Falmouth, MA 02540	
Paul Rifkin	874 Main Street Cotuit, MA 02635	
Janet Azarovitz	20 Shapquit Bars Circle, West Falmouth,	
	MA 02574	
Tom Azarovitz	20 Shapquit Bars Circle, West Falmouth,	
	MA 02574	
Diane Turco	157 Long Road, Harwich, MA 02645	
Wedge Bramhall	2 Sandwich Road, Plymouth MA 02360	
Arlene Williamson	103 Surf Drive, Mashpee, MA 02649	
William Maurer	140 Gifford Street, Falmouth, MA 02540	

Attachment: October 5, 2012 Letter re: Notice of Intent to Commence an Action under CWA \S 505

cc:

Senator John Kerry

Senator Scott Brown

Representative Edward Markey

Representative Bill Keating

Governor Deval Patrick

Secretary of EOEEA, Richard Sullivan

Senator Therese Murray

Senator Marc Pacheco

Senator Dan Wolf

Senator James Eldridge

Senator Robert Hedlund

Senator Benjamin Downing

Senator William Brownsberger

Representative Tom Calter

Representative Vinny DeMacedo

Representative Sarah Peake

Representative Lori Ehrlich

Representative James Cantwell

Representative Anne Gobi

Representative Frank Smizik

Representative Kate Hogan

Representative Randy Hunt

Representative Dan Winslow

Town of Plymouth, Board of Selectmen

Town of Plymouth, Nuclear Matters Committee

Town of Duxbury, Nuclear Matters Committee